

Riverside County MS4 Tentative Order No. R8-2010-0033
Comments/Responses 3rd Draft MS4 Permit December 19, 2009

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	Item No.	Commenting Parties & Page Numbers	Section No./Topic	Comment (most comments are verbatim from the comment letters or emails)	Response
1					
2	207	Kip Searcy	XII.G.	There are three, (3) primary areas of concern to us; they are:	
3			<p>1 - Pretreatment BMPs</p> <p>There is no clearly defined method for establishing a submittal/approval process for pretreatment BMPs.</p> <p>Pretreatment BMPs are utilized prior to storm water discharges entering into any type of infiltration devices), and are strongly recommended, [sic] required, throughout the 2003/2007 CASQA Development & Redevelopment Manual.</p>	Section XII.D.8 (Groundwater Protection) specifies pretreatment requirements in certain instances. However, it is anticipated that need for pretreatment prior to infiltration in other instances will be evaluated as part of the WQMP review process.	Section XII.D.8.f requires that source control and pollution prevention BMPs be implemented prior to infiltration. In most cases, if proper source control and pollution prevention techniques are used, there should not be any significant quantities of pollutants in the runoff. Section XII.D.h requires pretreatment for certain type of industrial sites where added protection may be needed due to the industrial activities at the site. These and other provisions in this section of the draft Order should provide the needed protection for groundwater where infiltration techniques are used.
4	208		<p>2 – Waivers</p> <p>The new permit only briefly discusses that a Permittee/Co-Permittee can issue a "waiver" when it is determined that a specific BMP, [sic] infiltration device, is not feasible for a particular site, however, it requires that: a. "Permittees should create technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs which may include such factors as a groundwater protection assessment to determine if infiltration BMPs are appropriate for the site".</p> <p>b. The permit further states that "a written report of such findings should be submitted to the Executive Director thirty (30) days prior to granting such waiver for the Board's approval".</p> <p>c. Realistically, Permittees do not have the financial capabilities to conduct such studies, nor the inclination, when a "regional analysis" can be utilized, to justify the use of an infiltration system, (see Section 3.b below).</p>	We believe it is important for the Permittees to have the flexibility to run their program in the most efficient manner to them. However, it is necessary for the Permittees to have a uniform criteria to evaluate the technical feasibility of implementing LID BMPs. In some cases regional soils studies may be sufficient as indicated in Footnote 64.	Section XII.G.1 of the draft Order requires the Permittees to develop a technically-based feasibility criteria for project evaluation to determine the feasibility of implementing LID BMPs. Only those projects that have completed a feasibility analysis as per the approved criteria should be considered for alternatives and in-lieu programs. The Watershed Action Plan required under Section XII.B should address some of the concerns expressed by the commenter about the Permittees inability to conduct the feasibility analysis and the need for a "regional analysis". Further, with regard to the financial capabilities to conduct feasibility analysis, it is likely that the feasibility analysis would be conducted by the project proponents and not the Permittees.

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5			<p>3 - Use of Proprietary Products</p> <p>a. Although the new permit does not specifically prohibit the use of proprietary treatment devices, it does require that someone, [sic] a Professional Engineer, shall determine (and certify) that no other BMP practices are applicable, via a site-specific analysis.</p> <p>b. The new permit also allows the Permittees the option to utilize a regional analysis, (conducted by the Permittees themselves), when determining if an infiltration BMP is feasible, and no longer requires that a BMP be site/pollutant-specific, (as has been an important component required in all previous permits issued by the Santa Ana RWQCB), and/or any of the previous state-wide permits.</p>	<p>a) Site-specific determinations will require Certification by a Professional Civil Engineer registered in the State of California. See Footnote 64. b) Regional analysis is an acceptable option in some cases. See footnote 64. c) We do not have the resources to evaluate new and unproven technologies. We encourage you to consult with USEPA or other states that may have a technology evaluation and certification program. d) The Principal Permittee has the responsibility to determine what BMPs will meet their requirements as well as comply with the MS4 permit.</p>	<p>The draft Order does not specify the manner of compliance; it provides a number of options for the Permittees to come into compliance with the water quality standards in the receiving waters (See California Water Code Section 13360(a)). Integrated watershed management approaches are generally considered as the most effective mechanism to address many of the water quality problems (for example, see State Board's 2008-12 Strategic Plan). Section XII.B of the draft Order requires the Permittees to develop and implement a Watershed Action Plan. The USEPA and other regulatory agencies, including the State Board, have indicated that low impact development is a sustainable storm water management technique (e.g., see: http://www.waterboards.ca.gov/water_issues/programs/low_impact_devellopment/index.shtml). As such, this draft permit and most other MS4 permits nationwide have a requirement to implement LID BMPs, where feasible. Where LID BMPs are not feasible, other treatment control techniques should be considered.</p>
6	209		<p>We fail to understand how the new permit's regulations are going to be of a long-term benefit, or that they would be in the public's best interest, specifically when the public is being denied the use of filtration technologies proven to be more effective (vs. infiltration practices) at pollutant removals.</p> <p>Katchall is requesting that the Board carefully reconsider the approval of the permit as it is currently proposed and further request that we, (and other manufacturer's) be included in developing the new language / procedures that would eliminate the oversights we believe to have occurred.</p>	<p>Although this permit promotes infiltration, evapotranspiration, and capture and use LID BMPs, treatment using conventional treatment devices are necessary where site conditions do not allow use of these LID BMPs.</p>	<p>The proposed Order emphasis the use of sustainable storm water management techniques, such as LID BMPs. It does not prohibit the use of any other treatment control technologies.</p>
7	210	Inland Empire Waterkeeper	<p><u>Section II.K</u></p>	<p>Waterkeeper encourages the Regional Board to adopt MS4 permits with clear, numeric effluent limits similar to those seen with the Lake Elsinore/Canyon Lake nutrient TMDL and the MSAR bacteria TMDL. There, consistent with 40 C.F.R. 122.44(d)(1)(vii)(B), the WLA in the approved TMDL act as de facto WQBELs. This provides permittees with clear, measurable and enforceable limitations which provide each permittee with notice and an opportunity to avoid violations.</p>	<p>The proposed Order includes the WLAs as the final numeric WQBELs in the absence of a comprehensive plan designed to comply with the WLAs by the compliance dates. The current approach provides an opportunity to the Permittees to develop a robust plan designed to comply with the WLAs and there is a clear measurable and enforceable end point.</p>
8				<p>However, consistent with our first comment letter concerning the County of Riverside and the County of San Bernardino's MS4 permits, we cannot support a monitoring mechanism which guarantees failure while trumpeting success. A circuitous compliance tool without concrete benchmarks, little hope for progress, and no potential for permittees to be held responsible for their failures is not a solution to chronic storm water pollution. (Also see Section F. below)</p>	<p>The Regional Board recognizes the complexity of the issues related to the bacteria and nutrient TMDLs and joint efforts by the TMDL stakeholders. The draft Order requires the affected Permittees not only to implement approved plans and programs, it also requires progress reports to determine progress towards achieving compliance with the WLAs by the compliance dates.</p>

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9	211		<u>Section II.F.23</u> As EPA stated, "Currently, the language suggests that compliance with the tasks in the implementation plan may satisfy the requirement to comply with the numeric WLAs, even if the various tasks do not result in actual compliance with the numeric WLAs." The letter concluded, "the revision would provide greater assurance of consistency with the WLAs and would enhance the enforceability of the permit with regards to the WLAs." We agree with EPA that WLAs as numeric limits is appropriate in a final permit and strongly encourage uniform consistency between the TMDL provisions for Riverside and Orange County's MS4 permit on this issue.	The language in the proposed Order very clearly states that numeric WQBELs (which are the approved WLAs) are enforceable the day after the compliance dates specified in the approved TMDLs. The language in the proposed Order is both consistent with the USEPA guidance (November 22, 2002) and their comment letter (October 8, 2009) and is enforceable.	
10	212		<u>Section XII.E</u> Waterkeeper echoes the opinion of EPA Region IX that the implementation of LID principles in MS4 permits, especially third or fourth generation permits, must include clear, measurable, and enforceable provisions for the implementation of LID. (emphasis added) Similarly, permits should also include clearly defined and enforceable process for requiring off-site mitigation for projects where use of LID design is infeasible. (emphasis added). Waterkeeper would not support replacing concrete quantifiable approaches with qualitative provisions without measurable goals. Previous municipal audits in California have identified a lack of detailed requirements as a frequent shortcoming in previously-issued MS4 permits in southern California. Refined clarity in the quantitative requirements of LID sought by the Regional Board would help clarify to all parties the requirements of the permit as well as providing a consistent foundation upon which to measure regional progress.	The proposed Order requires implementation of LID BMPs (Section XII.E), it includes a clear measurable and enforceable provision for the design of LID BMPs (Section XII.E.2) and requires the Permittees to develop a technically-based feasibility criteria for the Executive Officer's approval (Section XII.G.1). If LID BMPs are not feasible, participation in an in-lieu program could be considered. However, Section XII.G.2 requires that the in-lieu program should provide an equivalent level of water quality protection.	
11	213		<u>Section XII.G.3</u> Waterkeeper recommends the Regional Board consider requiring the pro rata development of BMPs to overall common development construction. For example, a common development construction in Riverside County which is twenty-five percent complete (phase 1 of 4) must have sufficient BMP capacity to address twenty-five percent of the storm water for that portion complete or enough to counter all of the immediately completed development.	Section XII.I requires the Permittees to conduct field verification of BMPs. The Permittees are also required to verify that the BMPs are working and functional prior to issuing occupancy permits (Section XII.I.2).	
12			<u>General</u> A common theme throughout this latest iteration of the MS4 permit is an unwillingness to hold those permittees accountable for their failure to abide by the terms of the permit, if that were to happen, and/or an uneasiness to demand specific goals be met by date certain. Previously, Waterkeeper submitted a comment letter to the Regional Board stating our opposition to a form of collaborative governance similar to the task force model used in the TMDL process. If permitted, the process will fail to achieve the concrete goals established in this or any MS4 permit because the intent of the process is not to reach defined objectives but rather to defer expenditures and responsibility.	The proposed Order includes enforceable deadlines and requirements. This Regional Board has a history of taking enforcement actions against the MS4 Permittees for violations of the MS4 Permit. Based on the Regional Board's experience with the various taskforces, we have had tremendous success in addressing a number of water quality problems in the Region through the taskforce process. In fact the Board adopted a resolution in appreciation of the work performed by these taskforces.	

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13				<p>We reiterate our firm opposition to the use of a collaborative task force approach in the execution and enforcement of the terms provided in this or any MS4 permit. Showing a "good faith effort" should not be the bar by which permittees are measured. We foresee this approach causing an unending chain of meetings for both the Regional Board staff and permittees resulting in little action, deferred compliance, a false sense of accomplishment on behalf of co-permittees and even less enforcement.</p> <p>The goal of the Clean Water Act is clear, to "restore and maintain the chemical, physical and biological integrity of the nation's waters" and to accomplish the lofty goal of "eliminating the discharges of pollutants by 1985, and to enhance water quality nationally to a 'fishable/swimmable' level by 1983." The end of this permit will fall on the thirtieth and thirty-second anniversaries of those two dates, respectively. That begs the question, how much closer does this iteration of the MS4 permit take us to accomplishing those goals?</p>	<p>Comment noted; based on the Regional Board's experience with the various taskforces, we have had tremendous success in addressing a number of water quality problems in the area through the taskforce process. In fact the Board adopted a resolution in appreciation of the work performed by these taskforces. Due to the complex nature of storm water runoff quality, it is extremely difficult to quantify the water quality benefits from the programs and policies implemented through the MS4 program. However, with the implementation of the BMPs to control bacteria, we have noticed discernable water quality improvements. We are confident that the TMDL and LID provisions would provide additional water quality benefits.</p>
14	214	NRDC	Section XII.E.2	The Permit Should Ensure that Only Water Retained Onsite Counts Toward the Design Capture Volume.	We have made the requirement for bio-treatment systems consistent with the Orange County MS4 permit. This Order considers a properly designed and maintained bio-treatment system as an acceptable LID BMP and provides credit for any volume that is bio-treated.
15	215		Section XII.G.	In Lieu and Alternative Programs Must Provide Water Quality Benefits at Least Equivalent to Those that Would Result From Compliance with Onsite LID Requirements	This section of the Permit has been revised to include this requirement. Section XII.G.1.
16	216			In Lieu Payments Must Correspond to Water Quality Impairment that Will Result from Non-Compliance with Onsite Retention Requirements.	This section of the Permit has been revised. Section XII.G.2.
17	217			The Credit System Should Only Award Credits to Projects Providing Equivalent Water Quality and Flow Volume Benefits.	See revisions to Section XII.G.4.
18	218			Where Onsite Retention is Infeasible, a Project Must Treat Water Before Discharging It.	If onsite and offsite treatment systems are not capable of addressing the design capture volume, then it must be treated using conventional treatment systems as per the approved WQMP. Section XII.D.1.
19	219			The Permit Must Require Multi-Stage Developments that Will Satisfy LID Requirements in Later Stages to Follow Through on Obligations.	Section XII.I requires the Permittees to conduct field verification of BMPs. The Permittees are also required to verify that the BMPs are working and functional prior to issuing occupancy permits (Section XII.I.2).
20	220			Total Maximum Daily Load Provisions Should Clearly Detail How Monitoring and Other Requirements will Ensure Compliance with WLAs.	The Regional Board has approved monitoring programs developed in response to the TMDL. Additional monitoring and reporting requirements are included in the draft Order.
21	221	RCFC&WCD	Fiscal Constraints	If adopted, the requirements proposed in the Tentative Order will result in significant operational and fiscal impacts to the MS4 Permittees during a period of economic distress.	Comment noted; please note that some adjustments were made to the schedules based on discussions with the stakeholders.
22	222		Requested Extension of Compliance Schedule	The MS4 Permittees request that most of the Permit compliance program compliance schedules be extended an additional six months.	Please see the January 19, 2010 errata version of the third draft; it includes some of the requested extensions.

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23	223		Sections XII.E and XII.G - Low Impact Development (LID) Provision Requirements	<p>The MS4 Permittees understand that Regional Board staff may be considering possibly revising Sections XII.E (specifically footnote 52) and XII.G of the Permit to require development projects that cannot feasibly capture the runoff design volume onsite to either:</p> <ol style="list-style-type: none"> 1. Capture the runoff design volume offsite as part of a regional solution; or 2. Participate in a credit, in-lieu or other mechanism to mitigate the portion of the runoff design volume that is not captured onsite in addition to providing onsite treatment. <p>Amendment of the Permit at this juncture to revise the LID provisions would, we believe, require a new public comment period, at least for such changes, since they would not clarify existing requirements but impose new ones.</p>	<p>Please note that in the January 19, 2010 underline/strikeout version the footnote regarding the bio-treated volume has been deleted. Now the proposed Order accepts bio-treatment as a third tier LID BMP. We believe that this is a minor modification to the proposed third draft of the Order. Furthermore, by this revision, the proposed Order is now consistent with the Orange County MS4 Permit. We do not believe that this minor modification requires another 30-day review.</p>
24	224		Section XVII.A	<p>Extend the deadline for program effectiveness evaluation updates from the first annual report completed after permit adoption to the third such annual report (2011-2012 Annual Report). The deadline proposed under the Draft Permit is premature as, the first two Annual Reports will be addressing programs developed under the prior Permit – not the new compliance programs envisioned under the new permit.</p>	<p>Please note that the proposed Order continues to implement many of the program elements under the previous MS4 permits. As such, a program effectiveness analysis should be included in each annual report.</p>
25	225		Section VIII.C	<p>Extend completion schedule from 24 to 48 months. The proposed revisions would allow the Permittees 36 months to develop the ordinance and another 12 months to adopt the ordinance once language had been solidified. We note that this request also was made by San Bernardino County in their January 7, 2010 comments regarding the San Bernardino County Permit. At minimum, the Permittees request the same amount of time that is currently provided to San Bernardino County for this task – 36 months.</p>	<p>This section has been revised to provide up to 36 months to promulgate and implement ordinances.</p>

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26	226		TMDL Provisions	<p>The redline comments submitted by the MS4 Permittees on January 6, 2010 and attached to this letter include specific changes of the Findings, including Findings K.3 and K.4, to make those Findings consistent with the language in the Third Draft regarding the incorporation of TMDLs.</p> <p>We respectfully incorporate San Bernardino County's January 7, 2010 comment letter with respect to various legal issues associated with these changes, as the provisions of the San Bernardino County permit are essentially identical to those set forth in the Riverside County permit.</p> <p>We believe that the TMDL provisions incorporated in the body of the Permit clearly set forth our mutual understanding that, with respect to the Middle Santa Ana River (MSAR), the MS4 Permittees are to develop a Comprehensive TMDL compliance plan that will, if approved by the Regional Board, constitute a BMP-based approach that will become the final water quality based effluent limitations (WQBELs) incorporating the MSAR Bacteria TMDL. If the plan is not approved prior to the compliance dates for the TMDL, the numeric waste load allocations in the TMDL would become the final WQBELs on the compliance date and would remain in effect until a comprehensive BMP plan is approved by the Regional Board. It is our further understanding that such an approach is intended by staff to avoid possible triggering of the anti-backsliding provisions of the Clean Water Act, which has been a major concern of the MS4 Permittees, as reflected in earlier comment letters.</p>	The TMDL provisions in the findings part of the proposed Order has been revised to clarify the provisions incorporated into the permit. Please see the January 19, 2010 errata to the third draft.